IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 189 of 1985

with

INCOME TAX REFERENCE No 283 OF 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

LEENABEN CHINUBHAI TRUST

Appearance:

MR B.B.Naik for Petitioner

Mr.B.B.Karia with Mr.R.K.Patel for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 06/11/2000

ORAL JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

In these 2 references, the following question of law arises:-

"Whether, the Appellate Tribunal has been right in law in confirming the view taken by the Appellate Assistant Commissioner that the assessee was entitled to claim deduction for the depreciation in the value of shares of Sayaji Mills Ltd., at Rs.108.75 per share while computing the capital gains on sale of 143 shares of Rajesh Textile Mills Ltd.?"

2. Learned Counsel appearing for the Department brings to our notice decision of this Court rendered in ITR 420 of 1983 between Commissioner of Income Tax Vs. Suhashbhai Vadilal, where the question has been answered in favour of the assessee and against the Revenue. Following the conclusion arrived at by the Division Bench in the case of C.I.T. Vs.Suhashbhai Vadilal (Supra) which fully answers the question raised in this reference. It reads as under:-

"We, are therefore, of the view that the assessee was entitled to claim deduction of the amount of depreciation in the value of his shares in Sayaji Mills Limited being the loss incurred by him in his capital asset in the transaction in which he acquired the shares in Rajesh Textile Mills Limited. The Tribunal therefore, rightly held that as the shares in Rajesh Textile Mills were received as a matter of right on the holding of the shares in Sayaji Mills Limited by the assessee, the cost of shares of Rajesh Textile Mills Limited was the price that was paid for such shares plus the depreciation in the value of such shares of Sayaji Mills Limited (against which they were issued) at the rate of Rs.108,75 paise per share. The question referred to us is therefore, answered in the affirmative against the Revenue and in favour of the assessee. The reference stands disposed of accordingly with no order as to costs."

We, therefore dispose of these references by answering the questions in favour of the assessee and against the Revenue. In the facts and circumstances of the case, we make no orders as to costs.

(D.M.Dharmadhikari, CJ)

(M.S.Shah, J)

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